JD-12-03
Detroit, MI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

MARTIN LUTHER MEMORIAL HOME, INC. d/b/a
LUTHERAN HERITAGE VILLAGE-LIVONIA

and Case No. 7-CA-44877

VIVIAN A. FOEMAN, An Individual

Judith A. Schulz, Esq., of Detroit, MI,
for the General Counsel.
Jeffrey N. Silveri, Esq., of Ann Arbor, MI,
for the Respondent-Employer.

DECISION

Statement of the Case

Bruce D. Rosenstein, Administrative Law Judge. This case was tried before me on November 7, 2002,[1] in Detroit, Michigan, pursuant to a Complaint and Notice of Hearing (the complaint) issued by the Regional Director for Region 7 of the National Labor Relations Board (the Board) on May 29. The complaint, based upon original and amended charges filed by Vivian A. Foreman (the Charging Party or Foreman), alleges that Martin Luther Memorial Home, Inc. d/b/a Lutheran Heritage Village-Livonia (the Respondent or Employer) has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying that it committed any violations of the Act.

Issues

The complaint alleges that the Respondent by issuance and distribution of its Employee Work Rules in October 2001 has maintained six overly broad rules in violation of Section 8(a)(1) of the Act. Additionally, the complaint alleges that the Respondent suspended on January 9, and thereafter terminated the Charging Party on January 23, in violation of Section 8(a)(1) and (3) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

[1] All dates are in 2002 unless otherwise indicated.

I. Jurisdiction

The Respondent is a corporation engaged in providing extended health care at its Livonia facility, where it annually had gross revenues in excess of $1,000.000. During that same period, Respondent purchased goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Michigan, and had said goods shipped directly to its Livonia facility from points located outside the State of Michigan. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 79, Service Employees International Union (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practice

A. Background

Foreman started employment with Respondent on July 12, 1999, as a Dietary Cook. Commencing in May 2000 and up to Foreman's termination on January 23, she was supervised by Food Service Director Stephanie Carter. The Union initiated an organizing drive at the Respondent in February 2001. Foreman supported the Union and went to a number of organizing meetings but was not one of the leading Union adherents during the course of the campaign. She did, however, serve as the union observer at the March 22, 2001 Board supervised election that the Union won. Foreman was selected as the Union steward for the dietary employees shortly after the election. Thereafter, Foreman served on the Union's bargaining committee that commenced initial contract negotiations with the Respondent in June 2001. Respondent's Administrator, Mel Scalzi, represented the Employer during the course of these negotiations. To date, the parties have been unable to finalize a collective-bargaining agreement. Accordingly, no formal grievance procedure exists that results in binding arbitration. Rather, the parties utilize an informal grievance procedure when confronted with employee problems and disciplinary matters.

At all times material, the Respondent has adhered to a series of Work Rules that is given to employees during their initial new-hire orientation (Jt Exh. 1). The purpose of the Work Rules is to protect the rights of everyone, ensure cooperation and define behavioral expectations to allow an atmosphere of providing good care of the residents entrusted to their care. The Rules and penalties are divided into three (3) Classes based on the seriousness of the infraction. Each Class represents progressive discipline for repeated infractions. As set forth in the Work Rules, the penalty for Class 1 offenses, or a combination of Class 1 offenses is a written reprimand for the first and second offense, a one-day suspension without pay for the third offense and discharge for the fourth offense. In practice however, an employee is able to incur a third written reprimand and discharge does not occur until an employee commits a fifth offense. For Class III offenses, an employee can be given up to a ten (10) day suspension without pay pending investigation followed by discharge if the allegation is found to be valid. All penalties assessed for violations of the Work Rules will be written in an Employee Discipline Record and one copy is provided to the employee. Each offense will be recorded in the employee's record for a period of one year, if the offense is a minor offense not involving suspension.

B. The Facts

On March 28, 2001, Foreman received her first Class I written reprimand for failing to punch her time card within a 30 day time period on two separate occasions. Foreman did not protest the discipline and signed the employee record form (GC Exh. 5).

On July 22, 2001, Carter gave Foreman her second Class I written reprimand for not notifying her that the refrigerator was not working properly causing large quantities of food to spoil. All employees on the afternoon shift, including Foreman, were disciplined for this infraction. Foreman signed the employee record form without protest (GC Exh. 6).

On or about December 6, 2001, employee Christy Brown was terminated for receiving her fifth Class I infraction. Carter requested that Foreman represent Brown in her informal grievance protesting the termination since Foreman was not at work when Carter observed Brown sleeping in her car during duty hours. Thus, Carter believed that Foreman would not have any bias regarding the issue, as the alternate steward was present when the discipline was given to Brown and observed the events in question. A grievance meeting took place on or about December 12, 2001, in which Foreman represented Brown. After heated arguments from both sides, Carter was not persuaded that Brown should be given another chance and the termination was upheld.

On December 18, 2001, Carter conducted an in-service meeting with employees on her staff including Foreman. An agenda for the meeting was prepared and Carter memorialized a summary of the meeting noting that pots and pans should be properly washed and not left overnight, the trash should be taken out, and employees should be courteous to one another (R Exh. 1).

On December 19, 2001, co-worker Angela Johnson complained to Carter that Foreman left a scorched pot in the sink overnight. The pot was left in the sink on the same day of the earlier conducted in-service meeting and Carter determined that a written reprimand was appropriate. Accordingly, Foreman was given her third Class I reprimand. While Foreman refused to sign the discipline form, she did not contest the fact that she left a scorched pot in the sink overnight (GC Exh.2). On the same day, Foreman reported to Carter that fellow employee Sandra Davis had left debris and leftovers in the sink overnight. Since this incident took place immediately after the in-service meeting held the preceding day, Carter gave Davis a written Class I reprimand (R Exh. 6).

On January 6, Foreman was on duty as the afternoon cook. She was in a hurry to leave that day because it was her birthday and she had a church function to attend that evening. Foreman acknowledged that she might have left the garbage uncovered in the trashcan and the lid on the food service counter. Carter summoned a witness to verify that garbage had been left uncovered and noted that Foreman also left prune juice on the counter rather then placing it in the refrigerator. Accordingly, Carter issued a fourth Class I written reprimand to Foreman (GC Exh. 7).

On January 9, employee Davis informed Carter that Foreman was the cook on duty January 8, and left for the day without preparing the dessert for the residents that evening. After verifying this incident, Carter prepared a Class I written reprimand for Foreman. The discipline record form noted that this was the fifth Class I infraction with a penalty of termination (GC Exh. 8). On the same day, Foreman reported to Carter that co-worker Angela Johnson left utensils in a mixing bowl rather then air drying them and putting them away at the end of the shift. Accordingly, Carter issued a Class I written reprimand to Johnson (R Exh. 7).

On January 8, Scalzi was at company headquarters and not present at the facility. He received a telephone call from Director of Nursing Denise Hubbard that a hostile work environment had erupted in the kitchen and a number of employees including Foreman were involved in this incident. Scalzi returned to the facility on January 9, and after discussions with

his staff decided to have a meeting with Foreman to discern the nature of the problems in the kitchen. Scalzi was also informed by Carter that she had just prepared a fifth Class I warning for an incident involving Foreman that occurred on January 8. Before the meeting could be convened, Foreman informed her supervisor that she was ill and needed to leave the facility. Instead of going directly home, Foreman proceeded to meet with her Pastor who helped console her. After the discussions with her Pastor, Foreman called the facility indicating that she felt better and was available to attend the meeting. Scalzi informed her that a union representative could attend the meeting to assist her but Foreman determined that it was not necessary.

The meeting took place around 4 p.m. on January 9 in the conference room. Foreman was informed that three employees provided statements to the Respondent that asserted she had uttered profanity in their presence and was harassing them (R Exh. 3, 4, and 5). Hubbard informed Foreman that the employees were considering filing a harassment suit against her and under the circumstances Scalzi was required to suspend her for a period of up to ten days while an investigation was conducted. Foreman stopped Hubbard at that point so she could get someone to witness what was being said. Foreman left the meeting and returned shortly thereafter with Nurse Angela Howard to be her witness.[2] Hubbard then apprised Foreman that Respondent's records confirmed that she recently received her fifth Class I written reprimand and that was grounds for termination. Scalzi gave Foreman copies of the three written employee statements that were attached to the employee discipline form (GC Exh. 4) and inquired whether she wanted to submit a written statement. Foreman thereafter submitted a written statement to Scalzi after consulting with Howard (GC Exh. 3). Hubbard showed Foreman the five previously written reprimands during the meeting and Scalzi testified that he faxed copies of these documents and the employee statements to the Union.

Before the above meeting was held on January 9, Scalzi discussed the problems in the kitchen with several employees. Based on these preliminary discussions and his review of the three employee's written statements, he decided that it was necessary to suspend Foreman pending investigation. After the suspension on January 9, Scalzi spoke to the entire kitchen staff to assess the problems in the kitchen and what role, if any, Foreman played (GC Exh. 11). Likewise, around that time, Scalzi received a telephone call from the Union seeking to schedule a meeting regarding Foreman. Initially, the meeting was set for January 15, but was rescheduled to January 23, due to a conflict in the schedule of the Union representative.

While Scalzi had made a final decision to terminate Foreman on January 21, primarily based on the five infractions and her involvement with the problems in the kitchen, he waited to meet with the Union on January 23 to convey his reasons for the termination. After the meeting, Scalzi telephoned Foreman to apprise her that she would be terminated effective January 23. A letter to this effect was mailed to Foreman on January 23 (GC Exh. 9).

C. The 8(a)(1) Allegations

The General Counsel alleges in paragraph 6 of the complaint that the Respondent has maintained six overly broad Work Rules.

The Board's standard for analyzing workplace rules like these is set out in *Lafayette*

[2] Although Scalzi informed Foreman that Howard could not represent her in the role of a union representative because she was a supervisor, he nevertheless permitted Howard to remain in the meeting to assist Foreman and serve as her witness.

Park Hotel, 326 NLRB 824, 825 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999), as follows:

> In determining whether the mere maintenance of rules such as those at issue here violates Section 8(a)(1), the appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights. Where the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement.

1. Class I, Rule # 1

This rule provides:

> Using abusive or profane language in the presence of, or directed toward, a supervisor, another employee, a resident, a doctor, a visitor, a member of a resident's family, or any other person on company property (the premises).

The subject rule is strikingly similar to a rule found unlawful in *Lafayette Park Hotel.* That rule precluded employees from making false, vicious, profane or malicious statements toward or concerning the Lafayette Park Hotel or any of its employees. The Board relied on *American Cast Iron Pipe Co.* 234 NLRB 1126 (1978), enfd. 600 F. 2d 132 (8th Cir. 1979), which invalidated a similar provision on the ground that it prohibited and punished merely "false" statements as opposed to maliciously false statements, and was therefore overbroad.

In a later case interpreting handbook rules, however, the Board in *Community Hospitals of Central California,* 335 NLRB No. 87 (2001), adopted language from the United States District of Columbia's Circuit decision in *Adtranz ABB Daimler-Benz Transportation, N.A., Inc. v. NLRB,* 253 F. 3d 19 (DC Cir. 2001), vacating in pertinent part 331 NLRB No. 40 (2000). In that case, the Court found that a work rule banning the use of "abusive or threatening language to anyone on Company premises" was not invalid or violative of the Act. Moreover, the Court found that *abusive* language in the workplace could constitute verbal harassment, triggering employer civil liability under both federal and state law for failure to maintain a workplace that is free of harassment. Further, the Court found that *threatening* language in the workplace carries with it the potential for violent confrontations, again triggering employer liability.

Under these circumstances, I find that the Respondent's maintenance of Class I, Rule # 1 clarifies for employees that the rules are designed to prohibit serious, employment-related misconduct and not to prohibit protected Section 7 activities. Accordingly, the subject rule does not violate Section 8(a)(1) of the Act.

2. Class I, Rule # 14

This rule provides:

> Selling or soliciting anything in the building or on company property (the premises) whether you are on duty or off duty, unless you have been given written permission by the Administrator.

The General Counsel contends that employees may reasonably believe they must seek Employer permission to engage in Section 7 conduct while on company property. I agree with this contention. Given its present form, it is not "far-fetched" that reasonable employees could

conclude that some Section 7 activity could be covered by this rule. In this regard, the rule prohibits soliciting anything in the building whether an employee is on or off duty. It makes no allowances for solicitation while an employee is on break, before or after regular duty hours and does not exclude from its coverage the cafeteria or parking areas. Moreover, the rule requires employees to obtain the employer's permission before engaging in solicitation. Such a requirement as a precondition to engaging in protected concerted activity on an employee's free time and in nonwork areas is unlawful. *Brunswick Corp.,* 282 NLRB 794 (1987). Further, the mere existence of an overly broad rule tends to restrain and interfere with employees' rights under the Act even if the rule is not enforced.

In my view, such a rule has a reasonably tendency to chill employees in the exercise of their Section 7 rights and its maintenance violates Section 8(a)(1) of the Act.

3. Class I, Rule # 17

This rule provides:

> Loitering on company property (the premises) without permission from the Administrator.

Section 7 of the Act protects employee communications with other employees and even customers about terms and conditions of employment. The term "loitering" is undefined and can reasonably be read to prohibit off-duty employees from engaging in protected communications with other employees in nonworking areas of the Respondent's property. Moreover, the term premises is not defined and employees could reasonably conclude that they could not engage in protected communications in the parking lot either before or after work. Even if the rule was established for legitimate business purposes, it is not so clear to define what is proscribed and eliminate any ambiguity as to whether protected activity is covered. It is this ambiguity that chills reasonable employees in the exercise of their Section 7 rights.[3]

Accordingly, I find that the Respondent's maintenance of this rule in its employee handbook is a violation of Section 8(a)(1) of the Act.

4. Class II, Rule # 16

This rule provides:

> Harassment of other employees, supervisors and any other individuals in any way.

In my opinion, this rule is unambiguous on it face. It does not prohibit Section 7 activity. It addresses the Respondent's business concern to maintain discipline and orderly, productive, and respectful relations between employees, managers and supervisors. Because the rule does not explicitly or implicitly prohibit Section 7 activity, I believe that employees could not reasonably fear that their protected right to communicate their views regarding the union or their

[3] The fact that there is no evidence of enforcement is irrelevant where, as here, the mere presence of the rule would reasonably tend to chill the employees in the exercise of their Section 7 rights. See *NLRB v. Beverage-Air Co.,* 402 F.2d 411, 419 (4th Cir. 1968) ("mere existence" of an overbroad but unenforced no-solicitation rule is unlawful because it "may chill the exercise of the employees' [Sec.] 7 rights").

wages and conditions of employment would expose them to potential discipline pursuant to the rule. Additionally, I note that the Respondent has not enforced the rule or by any other conduct led employees reasonably to believe that the rule prohibited Section 7 activity. In this regard, the General Counsel did not present any evidence that the above rule was relied upon by the Employer to discipline employees during the Union organizing campaign in February and March of 2001.

Under these circumstances, I would not find that this rule violates Section 8(a)(1) of the Act.

5. Class III, Rule # 5

This rule provides:

> Engaging in unlawful strikes, work stoppages, slowdowns, or other interference with production at any Martin Luther Memorial Home facility or official business meeting.

In my opinion, this rule can reasonably be read as encompassing Section 7 activity. For example, the rule as written, would prohibit employees from engaging in protected concerted activities concerning wages, conditions of employment or safety issues if it interfered with production or a business meeting. It could be construed to prohibit employees from voicing concerns over terms and conditions of employment during a group meeting and if the concerns escalated they could interfere with production. While the first portion of the rule regarding unlawful strikes, work stoppages, and slowdowns protects legitimate business interests, the later portion of the rule is overly broad and has a tendency to chill employees in the exercise of their protected rights. Where a rule is likely to have a chilling effect on Section 7 rights, the Board may conclude that its maintenance is an unfair labor practice, even absent evidence of enforcement. See *NLRB v. Vanguard Tours,* 981 F.2d 62, 67 (2d Cir. 1992), citing *Republic Aviation v. NLRB,* 324 U.S. 803 fn. 10 (1945).

Therefore, Respondent's maintenance of this rule violates the Act.

6. Class III, Rule # 10

This rule provides:

> Verbally, mentally or physically abusing a resident, a member of a resident's family, a fellow employee or a supervisor under any circumstances. This Includes physical and verbal threats.

In my opinion, this rule is unambiguous on its face. It does not prohibit Section 7 activity. It addresses the Respondent's business concern to maintain discipline and orderly, productive, and respectful relations between employees, managers, and supervisors. In the particular circumstances of this case it was relied upon to discipline Foreman due to her use of profanity in front of several co-workers and verbally abusing a supervisor by using profanity in reference to her (GC Exh.4, R Exh. 3, 4, and 5).

This rule does not expressly prohibit protected activity, nor could it reasonably be interpreted to do so. Further, there is no evidence that any employee has actually been prevented, discouraged, or restrained by this rule in any manner from exercising rights protected by Section 7.

Based on the forgoing, I would not find that Respondent's maintenance of this rule violates the Act. See *Tradesmen International,* 338 NLRB No. 49 (2002) (Rule Prohibiting "Slanderous or Detrimental Statements" does not chill employees in the exercise of their Section 7 rights.)

D. The 8(a)(1) and (3) Allegations

1. The Suspension

The General Counsel alleges in paragraph 7 (a) of the complaint that the Respondent suspended the Charging Party on January 9.

In *Wright Line,* 251 NLRB 1083 (1980), enfd, 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer decision. On such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.,* 462 U.S. 393, 399-403 (1993). In *Manno Electric,* 321 NLRB 278 fn. 12 (1996), the Board restated the test as follows. The General Counsel has the burden to persuade that antiunion sentiment was a substantial or motivating factor in the challenged employer decision. The burden of persuasion then shifts to the employer to prove its affirmative defense that it would have taken the same action even if the employee had not engaged in protected activity.

For the following reasons, I find that the General Counsel has made a strong showing that the Respondent was motivated by antiunion considerations in suspending Foreman. The evidence establishes that Foreman was the Union observer during the Board conducted election in March 2001, was elected Union steward shortly thereafter and participated in collective-bargaining negotiations as a member of the Union's bargaining team. Moreover, Foreman served as the union representative of co-worker Brown during heated discussions surrounding her suspension and termination.

The burden shifts to the Respondent to establish that the same action would have taken place even in the absence of the employee's protected conduct.

Scalzi, who was terminated from Respondent on March 5, impressed me as a credible witness who had a command of the facts and when necessary referred to a pocket calendar to confirm important dates and meetings with the Charging Party. He referred to Carter as a bright capable supervisor who was very reliable and respected by her subordinate employees. According to Scalzi, while Carter was strict she treated everyone fairly but often disciplined employees more frequently then other supervisors.

Scalzi learned about an incident in the kitchen while he was at company headquarters on January 8. Hubbard, who was acting on Scalzi's behalf, telephoned him to report that a number of employees had complained about discord and a hostile work environment in the kitchen instigated by Foreman. Upon his return to the facility on January 9, Scalzi talked to several employees in the kitchen about the problem and reviewed three written statements prepared by Carter and two employees that detailed the problems they were encountering with Foreman and her use of profanity in their presence and when referring to Carter. Since

Foreman's actions, if true, clearly violated a Class III Work Rule (Rule # 10), Scalzi determined to suspend her pending investigation. According to Scalzi, he needed to get Foreman out of the kitchen to calm down the situation.

Scalzi convened a meeting with Foreman during the afternoon of January 9. I find that Scalzi afforded Foreman the opportunity to be represented by the Union and provided the Union and her copies of the three employee statements asserting that she had engaged in violations of the Class III Work Rule. During the course of the meeting, Hubbard explained both the facts surrounding the harassment allegations as well as the five Class I infractions Foreman received within a one-year period. Scalzi also provided Foreman the opportunity to submit a written statement summarizing her version of the facts.

The General Counsel argues that the suspension was visited upon Foreman due to her engaging in representational activities on behalf of her co-workers, primarily her representation of Brown. Indeed, the General Counsel opines that the discipline given to Foreman after her representation of Brown was the cause of her suspension and subsequent termination. Foreman testified that on December 18 she spoke to Scalzi about the deteriorating relationship that existed between her and Carter and on the same day she spoke to Carter concerning their strained relationship since she represented Brown. Several days later, Foreman asserts that she again met with Carter with her union steward to discuss their strained relationship. The General Counsel did not call the union steward to confirm this second meeting. Based on my review of their overall credibility, I am inclined to believe Scalzi and Carter who both denied that they met with Foreman to discuss their deteriorating and strained relationship. Both Scalzi and Carter impressed me as reliable witnesses whose testimony had a ring of truth to it. Foreman, on the other hand, tended to blame all of her problems on Carter without accepting any responsibility for her own actions. She repeatedly denied that she was counseled about preparing desserts for the evening meal or being apprised about meal quality procedures when written records contradict her (GC Exh. 2,7,8 and R Exh. 1).

For all of the above reasons, I find that Foreman was suspended for legitimate business reasons unrelated to her representation of Brown. In this regard, Scalzi independently spoke to several employees who had witnessed the discord in the kitchen on January 8, and also reviewed three written statements prepared by employees who asserted that Foreman had used profanity in their presence when referring to Carter.

Under these circumstances, I recommend that the allegations concerning the suspension be dismissed and that no Section 8(a)(1) and (3) violation be found.

2. The Termination

The General Counsel alleges in paragraph 7(b) of the complaint that on January 23, the Respondent terminated the Charging Party.

Applying the *Wright Line* guidelines discussed above, I find that the General Counsel has made a strong showing that the Respondent was motivated by antiunion considerations in terminating Foreman.

In shifting the burden to the Respondent, I find that the same action would have been taken even in the absence of the employee's protected conduct. In this regard, I note that the first two Class I infractions visited upon Foreman occurred well in advance of the General Counsel's assertions that matters went down hill after her representation of Brown in early December 2001 (GC Exh. 5 and 6). The next three written reprimands took place on December

19, 2001, January 6 and 8. With respect to the December 19, 2001, reprimand I note that it immediately followed the December 18, 2001, in-service meeting where all employees including Foreman were instructed on the correct procedures for the cleaning of pots and pans and it was brought to Carter's attention by a co-worker that Foreman had left a dirty and scorched pot in the sink. Concerning the discipline given to Foreman on January 6, it involved two infractions that Carter credibly testified could have been written independently but in using her discretion they were written as one infraction, avoiding giving Foreman a fifth Class I written reprimand on that date. This represents further support that Carter was not casting about to get Foreman because of her prior representation of Brown. Lastly, a co-worker apprised Carter that Foreman did not prepare her desserts for the evening meal and that led to the January 8 written reprimand for that infraction (GC Exh. 8). In my opinion, Foreman was solely responsible for her actions that resulted in the three additional written reprimands after her representation of Brown. Indeed, there was an undercurrent of animosity that existed between Foreman and a number of co-workers in the kitchen. This is evidenced by Foreman reporting these individuals to Carter for Work Rule infractions followed by these employees retaliating against Foreman and reporting her infractions to Carter. In order to be consistent, Carter gave written reprimands to all employees who violated the Work Rules (R Exh. 6 and 7). Thus, it was the violation of the Work Rules amply supported by written documentation and co-worker reports that led to the termination rather then the General Counsel's attempt to shield the infractions based on Foreman's protected activities.

Based on the forgoing, I find that Foreman was terminated on January 23 for receiving five Class I written reprimands within a one year period and for violating Class III Work Rule # 10 when she used profane language towards her supervisor and fellow co-workers. Contrary to the General Counsel, I do not find that Foreman was terminated because of her protected activities and therefore recommend that paragraph 7(b) of the complaint be dismissed.

Conclusions of Law

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by maintaining overly broad Work Rules.

3. Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act when it suspended and thereafter terminated Vivian A. Foreman.

4. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Continued

ORDER

The Respondent, Lutheran Heritage Village-Livonia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the following Work Rules:

1. Selling or soliciting anything in the building or on company property (the premises), whether you are on duty or off duty, unless you have been given written permission by the Administrator. (Class I, Rule # 14)
2. Loitering on company property (the premises) without permission from the Administrator. (Class I, Rule # 17)
3. Engaging in unlawful strikes, work stoppages, slowdowns, or other interference with production at any Martin Luther Memorial Home facility or official business meeting. (Class III, Rule # 5)

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the Work Rules quoted above and advise the employees in writing that the rules are no longer being maintained.

(b) Within 14 days after service by the Region, post at its facility in Livonia, Michigan copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 1, 2001.

Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. February 3, 2003

Bruce D. Rosenstein
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT maintain the following Work Rules

Selling or soliciting anything in the building or on company property (the premises), whether you are on duty or off duty, unless you have been given written permission by the Administrator. (Class I, Rule # 14)

Loitering on company property (the premises) without permission from the Administrator. (Class I, Rule # 17)

Engaging in unlawful strikes, work stoppages, slowdowns, or other interference with production at any Martin Luther Memorial Home facility or official business meeting. (Class III, Rule # 5)

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the Work Rules quoted above and advise the employees in writing that the rules are no longer being maintained.

Lutheran Heritage Village-Livonia
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

JD-12-03

477 Michigan Avenue, Federal Building, Room 300, Detroit, MI 48226-2569
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 226-3244.